

Tribally Controlled Schools Act of 1988

(Part B of Title V of Public Law 100–297)

PART B—TRIBALLY CONTROLLED SCHOOL GRANTS

SEC. 5201. [25 U.S.C. 2501 note] SHORT TITLE.

This part may be cited as the “Tribally Controlled Schools Act of 1988”.

SEC. 5202. [25 U.S.C. 2501] FINDINGS.

The Congress, after careful review of the Federal Government’s historical and special legal relationship with, and resulting responsibilities to, Indians, finds that—

(1) the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step towards tribal and community control;

(2) the Bureau of Indian Affairs’ administration and domination of the contracting process under such Act has not provided the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities;

(3) Indians will never surrender their desire to control their relationships both among themselves and with the non-Indian governments, organizations, and persons;

(4) true self-determination in any society of people is dependent upon an educational process which will ensure the development of qualified people to fulfill meaningful leadership roles;

(5) the Federal administration of education for Indian children has not effected the desired level of educational achievement nor created the diverse opportunities and personal satisfaction which education can and should provide;

(6) true local control requires the least possible Federal interference; and

(7) the time has come to enhance the concepts made manifest in the Indian Self-Determination and Education Assistance Act.

SEC. 5203. [25 U.S.C. 2502] DECLARATION OF POLICY.

(a) RECOGNITION.—The Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational services so as to render such

services more responsive to the needs and desires of those communities.

(b) COMMITMENT.—The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy for education which will deter further perpetuation of Federal bureaucratic domination of programs.

(c) NATIONAL GOAL.—The Congress declares that a major national goal of the United States is to provide the resources, processes, and structures which will enable tribes and local communities to effect the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(d) EDUCATIONAL NEEDS.—The Congress affirms the reality of the special and unique educational needs of Indian peoples, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities. These may best be met through a grant process.

(e) FEDERAL RELATIONS.—The Congress declares its commitment to these policies and its support, to the full extent of its responsibility, for Federal relations with the Indian Nations.

(f) TERMINATION.—The Congress hereby repudiates and rejects House Concurrent Resolution 108 of the 83rd Congress and any policy of unilateral termination of Federal relations with any Indian Nation.

SEC. 5204. [25 U.S.C. 2503] GRANTS AUTHORIZED.

(a) IN GENERAL.—

(1) The Secretary shall provide grants to Indian tribes, and tribal organizations, that—

(A) operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau schools with assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

(2) Grants provided under this part shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is provided.

(3)(A) Except as otherwise provided in this paragraph, grants provided under this part shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education-related activities for which any funds that com-

pose the grant may be used under the laws described in section 5205(a), including but not limited to, expenditures for—

(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes, and

(ii) support services for the school, including transportation.

(B) Grants provided under this part may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operation and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 5205(a).

(C) If funds allocated to a tribally controlled school under title I of the Elementary and Secondary Education Act of 1965, the Individuals with Disabilities Education Act, or any Federal education law other than title XI of the Education Amendments of 1978 are included in a grant provided under this part, a portion of the grant equal to the amount of the funds allocated under such law shall be expended only for those activities for which funds provided under such law may be expended under the terms of such law.

(b) LIMITATIONS.—

(1) No more than one grant may be provided under this part with respect to any Indian tribe or tribal organization for any fiscal year.

(2) Funds provided under any grant made under this part may not be used in connection with religious worship or sectarian instruction.

(3) Funds provided under any grant made under this part may not be expended for administrative costs (as defined under section 1128A(e)(1) of the Education Amendments of 1978) in excess of the amount generated for such costs under section 1128A of such Act.

(c) LIMITATION ON TRANSFER OF FUNDS AMONG SCHOOLSITES.—

(1) In the case of a grantee which operates schools at more than one schoolsite, the grantee may expend no more than the lesser of—

(A) 10 percent of the funds allocated for a schoolsite under section 1128 of the Education Amendments of 1978, or

(B) \$400,000 of such funds, at any other schoolsite.

(2) For purposes of this subsection, the term “schoolsite” means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract with, the Bureau for which a discreet student count is identified under the funding formula established under section 1128 of the Education Amendments of 1978.

(d) NO REQUIREMENT TO ACCEPT GRANTS.—Nothing in this part may be construed—

(1) to require a tribe or tribal organization to apply for or accept, or

(2) to allow any person to coerce any tribe or tribal organization into applying for, or accepting, a grant under this part to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications, and the timing of such applications, shall be strictly voluntary. Nothing in this part may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—Grants provided under this part shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

(f) RETROCESSION.—Whenever an¹ tribal governing body requests retrocession of any program for which assistance is provided under this part, such retrocession shall become effective upon a date specified by the Secretary not more than 120 days after the date on which the tribal governing body requests the retrocession, or such later date as may be mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this part prior to the retrocession.

The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau school or as a contract school under title XI of the Education Amendments of 1978. Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a contract school) the existing equipment and materials which were acquired—

(1) with assistance under this part, or

(2) upon assumption of operation of the program under this part if it was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this part.

(g) NO TERMINATION FOR ADMINISTRATIVE CONVENIENCE.—Grants provided under this Act may not be terminated, modified, suspended, or reduced only for the convenience of the administering agency.

SEC. 5205. [25 U.S.C. 2504] COMPOSITION OF GRANTS.

(a) IN GENERAL.—The grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1128 and 1128A of the Education Amendments of 1978 with respect to the tribally controlled schools eligible for assistance under this part that are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs,

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section

¹ So in original. Probably should be “a”.

105 of the Indian Self-Determination Act (25 U.S.C. 450j), or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to all those referenced under section 1216(d) of the Education Amendments of 1978, or any other law), and

(3) the total amount of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965,

(B) the Individuals with Disabilities Education Act, and

(C) any other Federal education law,

that are allocated to such schools for such fiscal year.

(b) SPECIAL RULES.—

(1) In the allocation of funds under sections 1128, 1128A, and 1126(d) of the Education Amendments of 1978, tribally controlled schools for which grants are provided under this part shall be treated as contract schools.

(2) In the allocation of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965,

(B) the Individuals with Disabilities Education Act, and

(C) any other Federal education law,

that are distributed through the Bureau, tribally controlled schools for which grants are provided under this part shall be treated as Bureau schools.

(3)(A) Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) title I of the Elementary and Secondary Education Act of 1965,

(ii) the Individuals with Disabilities Education Act, or

(iii) any Federal education law other than title XI of the Education Amendments of 1978.

(B) Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

(4) Notwithstanding the provision of paragraph ¹ 5204(a)(2) of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2503(a)(2)), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant under such paragraph ² (a)(2), the grantee shall maintain a separate account for such funds and shall, at the end of the period designated for the work covered by the funds received,

¹ So in original. Probably should be “section”.

² So in original. Probably should be “section 5204(a)(2)”.

render a separate accounting of the work done and the funds used to the Secretary. Funds received from these accounts may only be used for the purposes for which they were appropriated and for the work encompassed by the application or submission under which they were received, except that a school receiving a grant under this part for facilities improvement and repair may use such grant funds for new construction if the tribal government or other organization provides funding for the new construction equal to at least one-fourth of the total cost of such new construction. Where the appropriations measure or the application submission does not stipulate a period for the work covered by the funds so designated, the Secretary and the grantee shall consult and determine such a period prior to the transfer of funds: *Provided*, That such period may be extended upon mutual agreement.

(5) If the Secretary fails to make a determination within 180 days of a request filed by an Indian tribe or tribal organization to include in such tribe or organization's grant the funds described in subsection (a)(2), the Secretary shall be deemed to have approved such request and the Secretary shall immediately amend the grant accordingly. Such tribe or organization may enforce its rights under subsection (a)(2) and this paragraph, including any denial of or failure to act on such tribe or organization's request, pursuant to the disputes authority described in section 5209(e).

SEC. 5206. [25 U.S.C. 2505] ELIGIBILITY FOR GRANTS.

(a) IN GENERAL.—

(1) A tribally controlled school is eligible for assistance under this part if the school—

(A) was, on April 28, 1988, a contract school under title XI of the Education Amendments of 1978 and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this part,

(B) was a Bureau school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b),

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c), or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b).

(2) Any application which has been submitted under the Indian Self-Determination and Education Assistance Act by an Indian tribe for a school which is not in operation on the date of enactment of this Act shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

(b) ADDITIONAL REQUIREMENTS FOR BUREAU SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

(1) A school that was a Bureau funded school under title XI of the Education Amendments of 1978 on April 28, 1988,¹ and any school with respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

(ii) make a determination of whether the school is eligible for assistance under this part, and

(B) the Secretary makes a determination that the school is eligible for assistance under this part.

(2)(A) By no later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) if the school is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization, and

(ii) whether the school is eligible for assistance under this part.

(B) In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

(ii) shall determine that the school is eligible for assistance under this part,

unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

(C) In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

(i) equipment,

(ii) bookkeeping and accounting procedures,

(iii) substantive knowledge of operating the school,

(iv) adequately trained personnel, or

(v) any other necessary components in the operation of the school.

(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL WHICH IS NOT A BUREAU FUNDED SCHOOL.—

(1) A school which is not a Bureau funded school under title XI of the Education Amendments of 1978 meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Sec-

¹ So in original.

Secretary an application requesting a determination by the Secretary of whether the school is eligible for assistance under this part, and

(B) the Secretary makes a determination that the school is eligible for assistance under this part.

(2)(A) By no later than the date that is 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this part.

(B) In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

(i) with respect to the applicant's proposal—

(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

(II) geographic and demographic factors in the affected areas;

(III) adequacy of applicant's program plans;

(IV) geographic proximity of comparable public education; and

(V) the needs as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations; and

(ii) with respect to all education services already available—

(I) geographic and demographic factors in the affected areas;

(II) adequacy and comparability of programs already available;

(III) consistency of available programs with tribal education codes or tribal legislation to education; and

(IV) the history and success of these services for the proposed population to be served, as determined from all factors and not just standardized examination performance.

(C) The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

(D) Applications submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers appropriate.

(E) If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application, the Secretary shall be treated as having made a determination that the tribally controlled school is eligible for assistance under the title and the grant shall become effective 18 months after the date on which the Secretary received the application, or an earlier date, at the Secretary's discretion.

(d) APPLICATIONS AND REPORTS.—

(1) All applications and reports submitted to the Secretary under this part, and any amendments to such applications or reports, shall be filed with the agency or area education officer designated by the Director of the Office of Indian Education of the Bureau of Indian Affairs. The date on which such filing occurs shall, for purposes of this part, be treated as the date on which the application or amendment is submitted to the Secretary.

(2) Any application that is submitted under this part shall be accompanied by a document indicating the action taken by the tribal governing body in authorizing such application.

(e) **EFFECTIVE DATE FOR APPROVED APPLICATIONS.**—Except as provided in subsection (c)(2)(E), a grant provided under this part, and any transfer of the operation of a Bureau school made under subsection (b), shall become effective beginning with the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or at an earlier date determined by the Secretary.

(f) **DENIAL OF APPLICATIONS.**—

(1) Whenever the Secretary declines to provide a grant under this part, to transfer operation of a Bureau school under subsection (b), or determines that a school is not eligible for assistance under this part, the Secretary shall—

(A) state the objections in writing to the tribe or tribal organization within the allotted time,

(B) provide assistance to the tribe or tribal organization to overcome all stated objections,

(C) provide the tribe or tribal organization a hearing on the record, under the same rules and regulations that apply under the Indian Self-Determination and Education Assistance Act, and

(D) provide an opportunity to appeal the objection raised.

(2) The Secretary shall reconsider any amended application submitted under this part within 60 days after the amended application is submitted to the Secretary.

SEC. 5207. [25 U.S.C. 2506] DURATION OF ELIGIBILITY DETERMINATION.

(a) **IN GENERAL.**—If the Secretary determines that a tribally controlled school is eligible for assistance under this part, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 5206, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

(b) **ANNUAL REPORTS.**—Each recipient of a grant provided under this part shall submit to the Secretary and to the tribal governing body (within the meaning of section 1121(j) of the Education Amendments of 1978) of the tribally controlled school an annual report that shall be limited to—

(1) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(2) a biannual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

(3) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(4) a program evaluation conducted by an impartial entity, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).

(c) REVOCATION OF ELIGIBILITY.—

(1)(A) The Secretary shall not revoke a determination that a school is eligible for assistance under this part if—

(i) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school, and

(ii) at least one of the following subclauses applies with respect to the school:

(I) The school is certified or accredited by a State or regional accrediting association as recognized by the Secretary of Education, or is a candidate in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by students within the education programs are, or will be, accepted at grade level by a State certified or regionally accredited institution.

(II) A determination made by the Secretary that there is a reasonable expectation that the accreditation described in subclause (I), or the candidacy in good standing for such accreditation, will be reached by the school within 3 years and that the program offered by the school is beneficial to the Indian students.

(III) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

(IV) The school accepts the standards promulgated under section 1121 of the Education Amendments of 1978 and an evaluation of performance is conducted under this section in conformance with the regulations pertaining to Bureau operated schools by an impartial evaluator chosen by the grantee, but no grantee shall be required to comply with these standards to a higher degree than a comparable Bureau operated school.

(V) A positive evaluation of the school is conducted once every 3 years under standards adopted by the contractor under a contract for a school entered into under the Indian Self-Determination and Education Assistance Act (or revisions of such standards agreed to by the Secretary and the grantee) prior to the date of enactment of this Act, such evaluation to be conducted by an impartial evaluator agreed to by the Secretary and the grantee. If the Secretary and a grantee other than the tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation.

If the Secretary and a grantee which is the tribal governing body fail to agree on such an evaluator, this subclause shall not apply.

(B) The choice of standards employed for purposes of subparagraph (A)(ii) shall be consistent with section 1121(e) of the Education Amendments of 1978.

(2) The Secretary shall not revoke a determination that a school is eligible for assistance under this part, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 5206(b)(1)(A), until the Secretary—

(A) provides notice to the tribally controlled school and the tribal governing body (within the meaning of section 1121(j) of the Education Amendments of 1978) of the tribally controlled school which states—

(i) the specific deficiencies that led to the revocation or resumption determination, and

(ii) the actions that are needed to remedy such deficiencies, and

(B) affords such authority an opportunity to effect any remedial actions.

The Secretary shall provide such technical assistance as is necessary to effect such remedial actions. Such notice and technical assistance shall be in addition to a hearing and appeal to be conducted pursuant to the regulations described in section 5206(f)(1)(C).

(d) **APPLICABILITY OF SECTION PURSUANT TO ELECTION UNDER SECTION 5209(b).**—With respect to a tribally controlled school which receives assistance under this part pursuant to an election made under section 5209(b)—

(1) subsection (b) of this section shall apply; and

(2) the Secretary may not revoke eligibility for assistance under this part except in conformance with subsection (c) of this section.

SEC. 5208. [25 U.S.C. 2507] PAYMENT OF GRANTS; INVESTMENT OF FUNDS.

(a) **PAYMENTS.**—

(1) Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this part in 2 payments, of which—

(A) the first payment shall be made not later than July 15 of each year in an amount equal to one-half of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than December 1 of each year.

(2) For any school for which no payment under this part was made from Bureau funds in the preceding academic year, full payment of the amount computed for the first academic year of eligibility under this part shall be made not later than December 1 of the academic year.

(3) With regard to funds for grantees that become available for obligation on October 1 of the fiscal year for which

such funds are appropriated, the Secretary shall make payments to grantees not later than December 1 of the fiscal year.

(4) The provisions of chapter 39 of title 31, United States Code, shall apply to the payments required to be made by paragraphs (1), (2), and (3).

(5) Paragraphs (1), (2), and (3) shall be subject to any restriction on amounts of payments under this part that are imposed by a continuing resolution or other Act appropriating the funds involved.

(b) INVESTMENT OF FUNDS.—

(1) Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this part after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this part shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law.

(2) Funds provided under this part may be—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or

(B) deposited only into accounts that are insured by an agency or instrumentality of the United States.

(c) RECOVERIES.—For the purposes of underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this part shall not be taken into consideration.

SEC. 5209. [25 U.S.C. 2508] APPLICATION WITH RESPECT TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—All provisions of sections 5, 6, 7, 104, 105(f), 106(f), 109, and 111 of the Indian Self-Determination and Education Assistance Act, except those provisions relating to indirect costs and length of contract, shall apply to grants provided under this part.

(b) ELECTION FOR GRANT IN LIEU OF CONTRACT.—

(1) Contractors for activities to which this part applies who have entered into a contract under the Indian Self-Determination and Education Assistance Act that is in effect upon the date of enactment of this Act may, by giving notice to the Secretary, elect to have the provisions of this part apply to such activity in lieu of such contract.

(2) Any election made under paragraph (1) shall take effect on the later of—

(A) October 1 of the fiscal year succeeding the fiscal year in which such election is made, or

(B) the date that is 60 days after the date of such election.

(3) In any case in which the 60-day period referred to in paragraph (2)(B) is less than 60 days before the beginning of

the succeeding fiscal year, such election shall not take effect until the fiscal year after the fiscal year succeeding the election. For fiscal year 1989, the Secretary may waive this paragraph for elections received prior to September 30, 1988.

(c) NO DUPLICATION.—No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act to pay any expenses incurred in providing any program or service if a grant has been made under this part to pay such expenses.

(d) TRANSFERS AND CARRYOVERS.—

(1) A tribe or tribal organization assuming the operation of a Bureau school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) A tribe or tribal organization assuming the operation of a contract school with assistance under this part shall be entitled to the transfer or use of the buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(3) Any tribe or tribal organization which assumes operation of a Bureau school with assistance under this part and any tribe or tribal organization which elects to operate a school with assistance under this part rather than to continue as a contract school shall be entitled to any funds which would carryover from the previous fiscal year as if such school were operated as a contract school.

(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—Any exception or problem cited in an audit conducted pursuant to section 5207(b)(2) of this Act, any dispute regarding the amount of a grant under section 5205 (and the amount of any funds referred to in that section), any payments to be made under section 5208 of this Act,¹ and any dispute involving an administrative cost grant under section 1128A of the Education Amendments of 1978 (25 U.S.C. 2008a) shall be handled under the provisions governing such exceptions, problems, or disputes in the case of contracts under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-658;² 25 U.S.C. 450 et seq.). The Equal Access to Justice Act shall apply to administrative appeals filed after September 8, 1988, by grantees regarding a grant under this part, including an administrative cost grant.

SEC. 5210. [25 U.S.C. 2509] ROLE OF THE DIRECTOR.

Applications for grants under this part, and all application modifications, shall be reviewed and approved by personnel under

¹Section 382(e)(1) of the Improving America's Schools Act of 1994 (P.L. 103-382; 108 Stat. 4018), attempted to amend this subsection by striking "the amount of a grant under section 5205 (and the amount of any funds referred to in that section), and payments to be made under section 5208 of this Act," and inserting "a grant authorized to be made pursuant to this part or any amendment to such grant." The amendment probably should have struck "any payments to be made" not "and payments to be made".

²So in original. Probably should be "Public Law 93-638".

the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

SEC. 5211. [25 U.S.C. 2510] REGULATIONS.

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary by this part. In all other matters relating to the details of planning, development, implementing, and evaluating grants under this part, the Secretary shall not issue regulations. Regulations issued pursuant to this part shall not have the standing of a Federal statute for the purposes of judicial review.

SEC. 5212. [25 U.S.C. 2511] DEFINITIONS.

For purposes of this part—

(1) The term “eligible Indian student” has the meaning of such term in section 1128(f) of the Education Amendments of 1978 (25 U.S.C. 2008(f)).

(2) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation (as defined in or established pursuant to the Alaskan Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3)(A) The term “tribal organization” means—

(i) the recognized governing body of any Indian tribe,

or

(ii) any legally established organization of Indians which—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization, and

(II) includes the maximum participation of Indians in all phases of its activities.

(B) In any case in which a grant is provided under this part to an organization to perform services benefiting more than one Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of those students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

(4) The term “Secretary” means the Secretary of the Interior.

(5) The term “tribally controlled school” means a school, operated by a tribe or a tribal organization, enrolling students in kindergarten through grade 12, including preschools, which is not a local educational agency and which is not directly administered by the Bureau of Indian Affairs.

(6) The term “a local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or

other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(7) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.